

Regular Session, 1997

HOUSE BILL NO. 1984

BY REPRESENTATIVES MCMAINS, DEWITT, AND VITTER AND
SENATORS DARDENNE, SCHEDLER, AND SHORT

AN ACT

To amend and reenact the heading of Chapter 5 of Title II of Book I of the Code of Civil Procedure, Code of Civil Procedure Arts. 591 through 594, 596, and 611, and the heading of Section 2 of Chapter 5 of Title II of Book I of the Code of Civil Procedure, to enact Code of Civil Procedure Arts. 612 through 617, and to repeal Code of Civil Procedure Art. 593.1, relative to class and derivative actions; to provide for procedural requirements for the filing, maintaining, and certification of class actions; to provide for notice to class members; to provide for judgments and other orders relative to class actions; to provide for dismissal or compromise of a class action; to provide for procedures and requirements for filing and maintaining derivative actions and provide for venue of all such actions; to provide for prescription of class actions; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. The heading of Chapter 5 of Title II of Book I of the Code of Civil Procedure, Code of Civil Procedure Arts. 591 through 594, 596, and 611, and the heading of Section 2 of Chapter 5 of Title II of Book I of the Code of Civil Procedure are hereby amended and reenacted and Code of Civil Procedure Arts. 612 through 617 are hereby enacted to read as follows:

CHAPTER 5. CLASS AND DERIVATIVE ACTIONS

SECTION 1. CLASS ACTIONS

Art. 591. Prerequisites; maintainable class actions

A. One or more members of a class may sue or be sued as representative parties on behalf of all, only if:

(1) The class is so numerous that joinder of all members is impracticable.

(2) There are questions of law or fact common to the class.

(3) The claims or defenses of the representative parties are typical of the claims or defenses of the class.

(4) The representative parties will fairly and adequately protect the interests of the class.

(5) The class is or may be defined objectively in terms of ascertainable criteria, such that the court may determine the constituency of the class for purposes of the conclusiveness of any judgment that may be rendered in the case.

B. An action may be maintained as a class action only if all of the prerequisites of Paragraph A of this Article are satisfied, and in addition:

(1) The prosecution of separate actions by or against individual members of the class would create a risk of:

(a) Inconsistent or varying adjudications with respect to individual members of the class which would establish incompatible standards of conduct for the party opposing the class, or

(b) Adjudications with respect to individual members of the class which would as a practical matter be dispositive of the interests of the other members not parties to the adjudications or substantially impair or impede their ability to protect their interests; or

(2) The party opposing the class has acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole; or

(3) The court finds that the questions of law or fact common to the members of the class predominate over any questions affecting only individual members, and that a class action is superior to other available methods for the fair and efficient adjudication of the controversy. The matters pertinent to these findings include:

(a) The interest of the members of the class in individually controlling the prosecution or defense of separate actions;

(b) The extent and nature of any litigation concerning the controversy already commenced by or against members of the class;

(c) The desirability or undesirability of concentrating the litigation in the particular forum;

(d) The difficulties likely to be encountered in the management of a class action;

(e) The practical ability of individual class members to pursue their claims without class certification;

(f) The extent to which the relief plausibly demanded on behalf of or against the class, including the vindication of such public policies or legal rights as may be implicated, justifies the costs and burdens of class litigation; or

(4) The parties to a settlement request certification under Subparagraph B(3) for purposes of settlement, even though the requirements of Subparagraph B(3) might not otherwise be met.

C. Certification shall not be for the purpose of adjudicating claims or defenses dependent for their resolution on proof individual to

a member of the class. However, following certification, the court shall retain jurisdiction over claims or defenses dependent for their resolution on proof individual to a member of the class.

Art. 592. Certification procedure; notice; judgment; and orders

A.(1) Within ninety days after service on all adverse parties of the initial pleading demanding relief on behalf of or against a class, the proponent of the class shall file a motion to certify the action as a class action. The delay for filing the motion may be extended by stipulation of the parties or on motion for good cause shown.

(2) If the proponent fails to file a motion for certification within the delay allowed by Subparagraph A(1), any adverse party may file a notice of the failure to move for certification. On the filing of such a notice and after hearing thereon, the demand for class relief may be stricken. If the demand for class relief is stricken, the action may continue between the named parties alone. A demand for class relief stricken under this Subparagraph may be reinstated upon a showing of good cause by the proponent.

(3)(a) No motion to certify an action as a class action shall be granted prior to a hearing on the motion. Such hearing shall be held as soon as practicable, but in no event before (i) all named adverse parties have been served with the pleading containing the demand for class relief or have made an appearance or, with respect to unserved defendants who have not appeared, the proponent of the class has made due and diligent effort to perfect service of such pleading; and (ii) the parties have had a reasonable opportunity to obtain discovery on class certification issues, on such terms and conditions as the court deems necessary.

(b) If the court finds that the action should be maintained as a class action, it shall certify the action accordingly. If the court finds that the action should not be maintained as a class action, the action may continue between the named parties.

(c) In the process of class certification, or at any time thereafter before a decision on the merits of the common issues, the court may alter, amend, or recall its initial ruling on certification and may enlarge, restrict, or otherwise redefine the constituency of the class or the issues to be maintained in the class action.

(d) No order contemplated in this Subparagraph shall be rendered after a judgment or partial judgment on the merits of common issues has been rendered against the party opposing the class and over such party's objection.

B.(1) In any class action maintained under Article 591(B)(3), the court shall direct to the members of the class the best notice practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort. This notice, however given, shall be given as soon as practicable after certification, but in any event early enough that a delay provided for the class members to exercise an option to be excluded from the class will have expired before commencement of the trial on the merits of the common issues.

(2) The notice required by Subparagraph B(1) shall include (a) a general description of the action, including the relief sought, and the names and addresses of the representative parties or, where appropriate, the identity and location of the source from which the names and addresses of the representative parties can be obtained; (b) a statement of the right of the person to be excluded from the action by submitting

an election form, including the manner and time for exercising the election; (c) a statement that the judgment, whether favorable or not, will include all members who do not request exclusion; (d) a statement that any member who does not request exclusion may, if the member desires, enter an appearance through counsel at that member's expense; (e) a statement advising the class member that the member may be required to take further action as the court deems necessary, such as submitting a proof of claim in order to participate in any recovery had by the class; (f) a general description of any counterclaim brought against the class; (g) the address of counsel to whom inquiries may be directed; and (h) any other information that the court deems appropriate.

(3) Unless the parties agree otherwise, the proponents of the class shall bear the expense of the notification required by this Paragraph. The court may require the party opposing the class to cooperate in securing the names and addresses of the persons within the class defined by the court for the purpose of providing individual notice, but any additional costs reasonably incurred by the party opposing the class in complying with this order shall be paid by the proponent of the class. The court may tax all or part of the expenses incurred for notification as costs.

C. The judgment in an action maintained as a class action under Article 591(B)(1) or (B)(2), whether or not favorable to the class, shall include and describe those whom the court finds to be members of the class. The judgment in an action maintained as a class action under Article 591(B)(3), whether or not favorable to the class, shall include and specify or describe those to whom the notice provided in Paragraph

B was directed, and who have not requested exclusion, and whom the court finds to be members of the class.

D. When appropriate (1) an action may be brought or maintained as a class action with respect to particular issues, or (2) a class may be divided into subclasses and each subclass treated as a class, and the provisions of Article 591 and this Article shall then be construed and applied accordingly.

E. In the conduct of actions to which Article 591 and this Article apply, the court may make any of the following appropriate orders:

(1) Determining the course of proceedings or prescribing measures to prevent undue repetition or complication in the presentation of evidence or argument.

(2) Requiring, for the protection of the members of the class or otherwise for the fair conduct of the action, that notice be given in such manner as the court may direct to members of the class of any step in the action, or of the proposed extent of the judgment, or of the opportunity of members to signify whether they consider the representation fair and adequate, to intervene and present claims or defenses, or otherwise to come into the action.

(3) Imposing conditions on the representative parties or on intervenors.

(4) Requiring that the pleadings be amended to eliminate therefrom allegations as to representation of absent persons, and that the action proceed accordingly.

(5) Dealing with similar procedural matters, including but not limited to case management orders providing for consolidation, duties of counsel, the extent and the scheduling of and the delays for pre-

certification and post-certification discovery, and other matters which affect the general order of proceedings; however, the court may not order the class-wide trial of issues dependent for their resolution on proof individual to a member of the class, including but not limited to the causation of the member's injuries, the amount of the member's special or general damages, the individual knowledge or reliance of the member, or the applicability to the member of individual claims or defenses.

(6) Any of the orders provided in this Paragraph may be combined with an order pursuant to Article 1551, and may be altered or amended as may be desirable from time to time.

Art. 593. Venue

A. An action brought on behalf of a class shall be brought in a parish of proper venue as to the defendant.

B. An action brought against a class shall be brought in a parish of proper venue as to any member of the class named as a defendant.

Art. 594. Dismissal or compromise

A.(1) An action previously certified as a class action shall not be dismissed or compromised without the approval of the court exercising jurisdiction over the action.

(2) Notice of the proposed dismissal of an action previously certified as a class action shall be provided to all members of the class, together with the terms of any proposed compromise that the named parties have entered into. Notice shall be given in such manner as the court directs.

B. After notice of the proposed compromise has been provided to the members of the class, the court shall order a hearing to determine whether the proposed compromise is fair, reasonable, and adequate for

the class. At such hearing, all parties to the action, including members of the class, shall be permitted an opportunity to be heard.

C. The court shall retain the authority to review and approve any amount paid as attorney fees pursuant to the compromise of a class action, notwithstanding any agreement to the contrary.

D. Any agreement entered by the parties to a class action that provides for the payment of attorney fees is subject to judicial approval.

E. If the terms of the proposed compromise provide for the adjudged creation of a settlement fund to be disbursed to and among members of the class in accordance with the terms thereof, the court having jurisdiction over the class action is empowered to approve the compromise settlement of the class action as a whole and issue a final judgment accordingly, following a finding that the compromise is fair, reasonable, and adequate for the class, and to order the distribution of the settlement fund accordingly, without the necessity of prior qualification of representatives of minors, interdicts, successions, or other incompetents or absentees, or prior approval of the terms of the settlement or the distribution thereof by another court; provided, that in such cases the court having jurisdiction over the class action shall include in the orders of settlement and distribution of the settlement fund appropriate provisions to ensure that all funds adjudicated to or for the benefit of such incompetents, successions, or absentees are placed in appropriate safekeeping pending the completion of appointment, qualification, and administrative procedures otherwise applicable in this Code to the interests and property of incompetents, successions, and absentees.

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Art. 596. Prescription; suspension

Liberative prescription on the claims arising out of the transactions or occurrences described in a petition brought on behalf of a class is suspended on the filing of the petition as to all members of the class as defined or described therein. Prescription which has been suspended as provided herein, begins to run again:

(1) As to any person electing to be excluded from the class, from the submission of that person's election form;

(2) As to any person excluded from the class pursuant to Article 592, thirty days after mailing or other delivery or publication of a notice to such person that the class has been restricted or otherwise redefined so as to exclude him; or

(3) As to all members, thirty days after mailing or other delivery or publication of a notice to the class that the action has been dismissed, that the demand for class relief has been stricken pursuant to Article 592, or that the court has denied a motion to certify the class or has vacated a previous order certifying the class.

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SECTION 2. DERIVATIVE ACTIONS

Art. 611. Derivative actions; prerequisites

When a corporation or unincorporated association refuses to enforce a right of the corporation or unincorporated association, a shareholder, partner, or member thereof may bring a derivative action to enforce the right on behalf of the corporation or unincorporated association. A derivative action may be maintained as a class action when the persons constituting the class are so numerous as to make it impracticable for all of them to join or be joined as parties. In the case of a derivative class action, Articles 594 and 595 shall apply.

Art. 612. Representation

One or more members of the class, who will fairly ensure the adequate representation of all members, may sue or be sued in a derivative class action on behalf of all members.

Art. 613. Procedure

After commencement of a derivative action by or on behalf of parties alleged to be members of a class, the court, on its own motion, or on the motion of any party or on trial of any exception directed to such issue, shall determine whether the action may be properly maintained as a class action as a prerequisite to any further proceedings therein. If the court finds that the action should be maintained as a class action, it shall certify the action accordingly. If not, the court may permit amendment of the pleadings in the action to permit maintenance thereof as a proceeding on behalf of parties expressly named therein under Article 616.

Art. 614. Venue

A derivative action of a shareholder, partner, or member to enforce a right of a corporation or unincorporated association shall be brought in the parish of proper venue as to the corporation or unincorporated association.

Art. 615. Petition in shareholder's derivative action

The petition in a class action brought by a shareholder, partner, or member of a corporation or unincorporated association because it refuses to enforce a right which it may enforce shall include all of the following:

(1) Allege that the plaintiff was a shareholder, partner, or member at the time of the occurrence or transaction of which he

complains, or that his share, partnership, or membership thereafter devolved on him by operation of law.

(2) Allege with particularity the efforts of the plaintiff to secure from the managing directors, governors, or trustees and, if necessary, from the shareholders, partners, or members, the enforcement of the right and the reasons for his failure to secure such enforcement, or the reason for not making such an effort to secure enforcement of the right.

(3) Join as defendants the corporation or unincorporated association and the obligor against whom the obligation is sought to be enforced.

(4) Include a prayer for judgment in favor of the corporation or unincorporated association and against the obligor on the obligation sought to be enforced.

(5) Be verified by the affidavit of the plaintiff or his counsel.

Art. 616. Shareholder's derivative action when not impracticable to join all shareholders, partners, or members

A. When it is not impracticable for all of the shareholders, partners, or members of a corporation or unincorporated association to join or to be joined as parties to a derivative action to enforce a right of the corporation or unincorporated association which it refuses to enforce, such action shall not be maintained as a class action. Instead, all of the shareholders, partners, or members who refuse or fail to join as plaintiffs in such an action shall be joined as defendants.

B. Derivative actions governed by this Article shall be subject to Articles 614 and 615.

Art. 617. Unincorporated association; definition; applicability

As used in Articles 611 through 616, the term "unincorporated association" shall include any unincorporated business association that is treated by controlling substantive law as a separate juridical person.

Section 2. Code of Civil Procedure Art. 593.1 is hereby repealed in its entirety.

Section 3. The provisions of this Act shall be applicable only to actions filed on and after its effective date.

Section 4. This Act shall become effective on July 1, 1997; if vetoed by the governor and subsequently approved by the legislature, this Act shall become effective on July 1, 1997, or on the day following such approval by the legislature, whichever is later.

SPEAKER OF THE HOUSE OF REPRESENTATIVES

PRESIDENT OF THE SENATE

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____